

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219728.2

DATE: December 10, 1985

MATTER OF: Moorman's Travel Service, Inc.--Request for
Reconsideration

DIGEST:

1. Agency may select a contractor, which received a slightly higher technical point score than the protester, for award of a no-cost, no-fee travel management contract, where the source selection official and the evaluators found that the contractor's proposal was technically superior to the protester's because the protester's proposal demonstrated a lack of understanding of the requirements, which was the heaviest weighted evaluation criterion. Since point scores are only a guide to intelligent decisionmaking, the source selection official can reasonably find that proposals are not technically equal in this case.
2. Discussions need not be held with the two offerors within a competitive range on a no-cost, no-fee travel management services contract, even though the technical point scores of the offerors' proposals are very close, where the agency has a reasonable basis for award selection.
3. Offeror submitted a proposal containing a letter of accreditation, which the contractor altered by substituting its name for and erasing the name of the predecessor corporation for which the accreditation was issued. This accreditation was

necessary to be found a responsible contractor and the agency relied on the altered accreditation to find the offeror responsible. However, a protest on this basis of an award to the offeror is denied, where the offeror had received the proper accreditation prior to contract performance and the agency found that the offeror therefore would be responsible and where there was no requirement that proof of accreditation be submitted with the proposal.

Moorman's Travel Service, Inc. (Moorman), requests reconsideration of our decision in Moorman's Travel Service, Inc., B-216618, July 9, 1985, 64 Comp. Gen. ___, 85-2 C.P.D. ¶ ___, in which we dismissed Moorman's protest of an award of a contract to Anthony-Bennett Travel, Inc. (ABT), under request for proposals (RFP) No. DAAE07-84-R-Q022, issued by the United States Army Tank-Automotive Command (TACOM), for travel management services at TACOM's facility in Warren, Michigan. Moorman protested that TACOM improperly evaluated Moorman's and ABT's proposals and failed to conduct discussions.

We dismissed Moorman's protest because we found that that the agency's selection of a contractor to provide these services was no more than a management vehicle to facilitate its travel purchases. This case followed our decision in T.V. Travel, Inc., et al., B-218198, et al., June 25, 1985, 85-1 C.P.D. ¶ 720, where we dismissed for the same reason protests of a selection of a travel management center contractor by the General Services Administration (GSA). Moorman contends the T.V. Travel decision is erroneous as a matter of law.

By decision of today in T.V. Travel, Inc., et al.,--Request for Reconsideration, B-218198.6, et al., 85-2 C.P.D. ¶ ___, we reconsidered our dismissals of the protests of the GSA selection of travel management center contractors. We found that the protests were cognizable by our Office under the bid protest authority established by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. § 3551(1) (West Supp. 1985), since these selections involved the awards of procurement contracts.

Although Moorman's protest was filed under our Bid Protest Procedures in effect prior to the Competition in Contracting Act's effective date, we will consider Moorman's protest since it involves a contract selection under a procurement. We deny the protest on the merits.

BACKGROUND

Five proposals, including Moorman's and ABT's, were received in response to the RFP by August 13, 1984. The proposals were evaluated, in accordance with RFP evaluation criteria, by two groups of technical evaluators. The initial evaluators, employees of TACOM, found the proposals of ABT and Moorman to be within the competitive range, scoring ABT 100 points and Moorman 96.3 points on a 100-point scale. The other three proposals were determined to be outside the competitive range and were rejected. These evaluators found no deficiencies or weaknesses in ABT's proposal. They noted the following deficiencies in Moorman's proposal: (1) the proposal failed to indicate experience and understanding in government procedures in providing travel services to the government; (2) the proposal failed to address fully the requirements for a "no fee passport" section in its organization; (3) the proposal failed to address fully the requirement for providing employees with rental car cost comparisons; and (4) the proposed computer equipment, although very good, was biased to favor the airline carrier that owns the equipment in selecting an air carrier for a travel request. These evaluators and TACOM's Chief of the Transportation Management Division recommended award to ABT without further discussions.

The results of the evaluation, however, were so close that TACOM decided to have an additional evaluation of ABT's and Moorman's proposals by personnel from the Military Traffic Management Command (MTMC), an outside agency. These evaluators scored ABT 90.3 points and Moorman 89.8 points on a 100-point scale. They judged ABT's proposal to be slightly superior based on that firm's current proven ability to perform and its experience with government travel. They also noted the apparent lack of understanding by Moorman of government travel requirements.

The source selection official considered the foregoing evaluations, point scores, and recommendations, and concluded that ABT should be selected for award because "a

distinction does exist between these two otherwise excellent proposals . . . [ABT] is a proven source capable of performing government travel requirements while [Moorman] has shown a misunderstanding of government procedures."

The RFP provided that the offerors must propose a percentage rate of unofficial travel dollars that the contractor will pay a Department of Defense (DOD) nonappropriated fund instrumentality, and that this commission percentage will be considered in the evaluation of proposals, if, after evaluation, two overall proposals are considered to be otherwise equivalent. ABT proposed a 4-percent commission and Moorman proposed 5 percent. The source selection official found that "the one percent difference is not considered significant given the advantage [ABT] has on the prime purpose of the contract, providing official government travel services."

In view of the foregoing, award was made to ABT without discussions on September 14, 1984. Contract performance commenced on October 1, 1984.

Moorman protests that the four deficiencies noted in its proposal by the TACOM evaluators are baseless, and that the evaluation of Moorman's and ABT's proposals was unreasonable. Moorman also contends that TACOM did not properly evaluate Moorman's status as a woman-owned small business. Moorman contends that the point scores show that its proposal was evaluated by TACOM as equal to ABT's proposal, even though its proposal was actually superior. Moorman argues that it therefore should have been selected for award based upon its more advantageous commission rate on unofficial travel. Moorman also contends that TACOM was required to conduct meaningful discussions. Moorman contends that if TACOM had conducted discussions, it would have realized that it had not understood and had miscalculated Moorman's proposal. Finally, Moorman contends that ABT's proposal failed to meet contract specifications, in that ABT was not an agent approved by the Air Traffic Conference of American (ATC). The ATC is an organization representing most scheduled air carriers, whose accreditation is necessary in order for travel agents to obtain stocks of airline tickets to supply travelers.

The Army and ABT contend that all or part of Moorman's protest is untimely. However, Moorman's protest filed on October 1, 1984, was filed within 10 working days of September 17, 1984, when Moorman said that it was notified of the award decision. Moorman's additional findings and material merely provide support for the timely, albeit sketchy, protest and will be considered by our Office under our Bid Protest Procedures, 4 C.F.R. part 21 (1984), that were in effect for protests filed prior to January 14, 1985. Kappa Systems, 56 Comp. Gen. 675 (1977), 77-1 C.P.D. ¶ 412.

EVALUATION OF THE PROPOSALS

Moorman has protested that the deficiencies noted in its proposal are baseless and that its proposal otherwise was not given sufficient credit in comparison to the evaluation of ABT's proposal. The standard of our review of an agency's technical proposal evaluation is to determine whether proposals were evaluated reasonably and in accord with the solicitation criteria. If so, and if there are no other violations of the procurement statutes and regulations, an award is not legally objectionable. P-III Associates, B-213586, B-213586.2, July 31, 1984, 84-2 C.P.D. ¶ 136. The protester bears the burden of showing that an agency's evaluation was unreasonable. Potomac Scheduling Company, Axxa Corporation, B-213927, B-213927.2, Aug. 13, 1984, 84-2 C.P.D. ¶ 162. A mere disagreement between a protester and an agency over a technical evaluation is not sufficient in itself to show that the agency's exercise of judgment was unreasonable. National Council for Urban Economic Development, Inc., B-213434, Aug. 1, 1984, 84-2 C.P.D. ¶ 140.

The proposals of Moorman and ABT were closely ranked by the evaluators as indicated by the point scores. The only significant evaluated difference between the proposals was that Moorman's proposal showed a lack of understanding of government travel requirements and regulations. This deficiency was the primary one noted by both the TACOM and MTMC evaluators as well as the primary reason given by the source selection official as to why ABT was selected.

Moorman's proposal offered to supply all air travel tickets at 60 percent or less than regular coach fares. However, Moorman's proposal did not address the "city-pair"

contracts which the federal government has negotiated with various scheduled air carriers at special rates, which are mandatory for use by government travelers with certain specified exceptions. See Federal Property Management Regulation, Temporary Regulation No. A-22, Supp. II, 48 Fed. Reg. 55,737 (1983). Moorman failed to indicate how its discount program would integrate with the "city-pair" contracts and still comply with the regulations. Consequently, we believe its proposal could reasonably be downgraded for failing to demonstrate an appropriate understanding of government requirements. Moorman's mention in its proposal that it will have a policy and procedures workbook which addresses government travel regulations and other requirements and that its employees will be trained in these matters does not show that it understood the requirements. "Understanding of the Requirements" was the most heavily weighted evaluation criterion in the RFP.

With regard to Moorman's protest of the deficiencies concerning no-fee passports and rental car cost comparison, our review of the record discloses that Moorman was slightly downgraded by the TACOM evaluators for failing to "fully address" these requirements. However, these deficiencies were so minor that they were not relied upon by the source selection official in making the award selection. Consequently, this matter will not be considered further.

It is contended that Moorman's proposed equipment was biased in favor of a particular scheduled air carrier. Our review of the record reveals some disagreement among the evaluators about the relative bias and quality of this equipment. Although the source selection official mentioned a preference by the TACOM transportation officer for the ABT equipment in the selection statement, this too did not seem to be a factor which significantly affected the award selection, so it will not be considered further.

Moorman also asserts that it was not given sufficient credit in a number of areas in which it believes its proposal was superior to ABT's proposal. Moorman alleges that it should have been higher rated because of its superior plans and capability to provide the primary and secondary services; the detailed explanations of the extensive qualifications and experience of its staff and project manager; Moorman's superior experience and background in performing volume travel work; its careful explanation of

Moorman's approach to quality control, organization and staffing; its extensive hotel discount program; its onsite facilities; and its superior financial capacity. Our review indicates that neither ABT's nor Moorman's proposal was downgraded in any significant way in these areas (except for Moorman's evaluated lack of understanding of government requirements). From our review, we can find no area where the Army unreasonably failed to downgrade ABT's proposal or to give proper recognition to Moorman's proposal in these areas.

Further, Moorman's status as a woman-owned small business could not be considered in the award evaluation, since it was not a specified evaluation factor on this unrestricted procurement. Francis & Jackson Associates, B-190023, Jan. 31, 1978, 78-1 C.P.D. ¶ 79.

Moorman protests that the point scores were so close as to signify technical equality, such that no reasonable award judgment could be made on the basis of the point scores. Moorman contends that it therefore should have been selected because it proposed the most advantageous commission for unofficial travel.

However, the point scores are used as a guideline to intelligent decisionmaking by source selection officials, and award should not be based upon the difference in technical scores alone. Rather, a selection should reflect the procuring agency's considered judgment of the significance of the difference in point scores. RCA Service Company, B-208871, Aug. 22, 1983, 83-2 C.P.D. ¶ 221; Intermountain Research, B-209827, July 21, 1983, 83-2 C.P.D. ¶ 103; Ecology & Environment, Inc., B-209516, Aug. 23, 1983, 83-2 C.P.D. ¶ 229. In other words, the source selection official is not bound by the recommendations of the evaluators, but must determine if he agrees that the point scores are indicative of technical superiority and what the difference in point scores may mean in contract performance. RCA Service Company, B-208871, supra. The judgment of the procuring agency concerning the significance of the difference in the technical merit of offers and whether or not offers are technically equal will be afforded great weight by this Office. The Singer Company, B-211857; B-211857.2, Feb. 13, 1984, 84-1 C.P.D. ¶ 177.

The source selection official here determined that there was a sufficient technical difference to justify award to ABT based upon the reasonable finding that Moorman's proposal did not reflect an understanding of the requirements. It follows that the source selection official was justified in determining that the proposals were not equal, and he was not required to base his award selection upon the most advantageous commission arrangement on nonofficial travel. In this regard, TACOM found that the volume of non-official travel has not been significant nor is it the primary purpose of the contract. In any case, such a factor is clearly not of the legal significance of cost or price in making an award selection in a negotiated procurement.

DISCUSSIONS

Moorman argues that TACOM was required to conduct discussions, particularly in view of the close point scores. Moorman claims that this would have revealed to the Army that it misunderstood Moorman's proposal. Moorman also contends that the Army could not avoid the requirement for discussions by determining that the services were obtained for a "fair and reasonable price," since price is not a factor in the procurement. TACOM argues that it did not have time to conduct discussions and any discussions with Moorman would have constituted improper "leveling" of the proposals.

The possibility of an award without discussions was specifically noted in the RFP. Since the contract price cannot be other than fair and reasonable on a no-cost, no-fee contract, an agency may make an award without discussions if otherwise justified. An award without discussions is proper, even if the technical point scores are very close, where, as here, the procuring agency has a reasonable basis for award selection. The Singer Company, B-211857, et al., supra; Cotton & Company, B-210849, Oct. 12, 1983, 83-2 C.P.D. ¶ 451; ADP Network Services, Inc., B-200675, Mar. 2, 1981, 81-1 C.P.D. ¶ 157. Therefore, TACOM could decide to make an award without discussions.

MISREPRESENTATION OF ACCREDITATION

Moorman claims that ABT misrepresented in its proposal that it had the necessary travel agency accreditation from ATC. Where it is established that an offeror made an

intentional misrepresentation that materially influenced the agency's consideration of its proposal, the proposal should be disqualified and a contract award based on the proposal may be canceled. SETAC, Inc., 62 Comp. Gen. 577, 581-582 (1983), 83-2 C.P.D. ¶ 121; New England Telephone and Telegraph Company, 59 Comp. Gen. 746 (1980), 80-2 C.P.D. ¶ 225; Informatics Inc., 57 Comp. Gen. 217 (1978), 78-1 C.P.D. ¶ 53.

In this case, ABT submitted with its proposal what purported to be a notice from ATC of accreditation to that offeror, "Anthony Bennett Travel, Inc." The Army relied upon this purported accreditation letter and concluded that no misrepresentation was made and that this protest basis therefore was moot and not meritorious.

However, upon investigation by the protester and the Army after receipt of the agency report and a GAO conference on the protest, it was established that ABT had altered this accreditation letter, without notifying the Army, by substituting its name for and erasing the name of the entity to which this accreditation actually had been issued, "Anthony Bennett Contractors, Inc., d/b/a Anthony Bennett Travel." ABT and the Army report that Anthony Bennett Contractors, Inc., is a different legal entity from the offeror, Anthony Bennett Travel, Inc.; that it was acquired by and dissolved into ABT; and that it was the incumbent contractor for this work. ABT finally admitted that it altered this accreditation letter from ATC and that it did this to reflect the business identity to which this accreditation would be applicable for this contract work.

By letter dated August 15, 1984, shortly after the closing date for receipt of proposals, ATC approved a change of ownership from Anthony Bennett Contractors, Inc., to Anthony Bennett Travel, Inc., for accreditation as an approved travel agency. The same travel agency designation code was retained. This letter was apparently not brought to the Army's attention until after contract performance had commenced when the alteration was discovered. Instead, the Army relied upon the altered ATC accreditation contained in the proposal in finding that ABT was a responsible contractor. The record indicates that ABT received the ATC acknowledgment of accreditation and change of ownership before it commenced contract performance. There is no indication that ATC ever considered withdrawing or not approving

the accreditation of ABT or Anthony Bennett Contractors, Inc. The Army now claims that since ABT had the requisite accreditation prior to contract performance, the altered document in the proposal did not materially influence the ultimate determination. Moorman has not successfully rebutted the Army's explanation determining ABT to be responsible.

Moorman has alleged that ABT's proposal was required to be rejected since it had not submitted proper proof of accreditation with its proposal. In this regard, the RFP provided at paragraph M-7:

"An offeror must be determined responsible in accordance with the provisions of the Federal Acquisition Regulation (FAR), part 9 to be eligible for award. As a part of this determination, the offeror must be accredited or authorized to act as an agent for air, rail and bus carriers; hotels/motels; and rent-a-car companies. The successful offeror will be required to provide proof of its accreditation or authorization."

We do not believe that the general reference to submitting proof of accreditation, without specifying a particular document or license, constituted a definitive responsibility criteria. Allen N. Campbell Company, B-202244, July 30, 1981, 81-2 C.P.D. ¶ 86. Nor do we believe that the RFP required that proof of the accreditation be submitted by the closing date for receipt of proposals in order for an offeror to be considered a responsible contractor.

In view of the foregoing, the protest is denied.



Acting Comptroller General
of the United States